

1 JOHN L. BURRIS, Esq./ State Bar #69888
2 BENJAMIN NISENBAUM, Esq./State Bar #222173
3 LAW OFFICES OF JOHN L. BURRIS
4 Airport Corporate Centre
5 7677 Oakport Street, Suite 1120
6 Oakland, California 94621
7 Telephone: (510) 839-5200 Facsimile: (510) 839-3882
8 Email: john.burris@johnburrislaw.com
9 bnisenbaum@gmail.com

10 Attorneys for Plaintiff

11 DENNIS J. HERRERA, City Attorney, State Bar # 139669
12 JOANNE HOEPER, Chief Trial Attorney, State Bar # 114961
13 SEAN F. CONNOLLY, Deputy City Attorney, State Bar # 152235
14 Fox Plaza
15 1390 Market Street, 6th Floor
16 San Francisco, California 94102
17 Telephone: (415) 554-3863 Facsimile: (415) 554-3837
18 Email: sean.connolly@sfgov.org

19 Attorneys for Defendants
20 CITY AND COUNTY OF SAN FRANCISCO, ET AL.

21 UNITED STATES DISTRICT COURT
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA

23 ESTHER HWANG,

Case No. C 07 2718 MCC

24 Plaintiff,

STIPULATED PROTECTIVE ORDER

25 vs.

26 CITY AND COUNTY OF SAN FRANCISCO,
27 a municipal corporation; HEATHER FONG, in
28 her capacity as Chief of Police for the CITY
AND COUNTY OF SAN FRANCISCO; JESSE
SERNA, individually, and in his capacity as a
police officer for the CITY AND COUNTY OF
SAN FRANCISCO; NELSON ARTIGA,
individually and in his capacity as a police
officer for the CITY AND COUNTY OF SAN
FRANCISCO; and, San Francisco police officers
DOES 1-25, inclusive,

Defendants.

/

1 Pursuant to Federal Rule of Civil Procedure 26(c) the parties have met and conferred and
2 agree that the discovery of CONFIDENTIAL INFORMATION in this matter be made pursuant to the
3 terms of this PROTECTIVE ORDER.
4

5 GOOD CAUSE APPEARING, the parties stipulate, though their attorneys of record, to the
6 entry of an order as follows:

7 1. CONFIDENTIAL INFORMATION, within the meaning of this PROTECTIVE ORDER,
8 shall include all documents containing peace officer personnel records (including, but not limited to,
9 current and former officers' home addresses, medical records, and complaints and disciplinary
10 records in the files of the San Francisco Police Department and/or the Office of Citizens'
11 Complaints), official information and any other such documents that defendants in good faith have
12 determined to be confidential. Defendants shall attempt to stamp "Confidential" on all such
13 documents prior to production. In the event that any CONFIDENTIAL INFORMATION is
14 inadvertently not stamped as "Confidential" by defendants, the party who notices this oversight shall
15 immediately make it known to the other parties and the documents shall immediately be stamped as
16 "Confidential" and treated as such, as per this order.

17 2. The CONFIDENTIAL INFORMATION shall not be exhibited, displayed or otherwise
18 disclosed by Plaintiff's Counsel (or authorized persons described in paragraph 5) to other persons
19 except as specifically provided herein.

20 3. Plaintiff may challenge defendants' designation of a particular document as
21 CONFIDENTIAL INFORMATION by filing an appropriate motion, under seal, with the Court. The
22 parties agree that the prevailing party in a motion to remove the confidential designation shall waive
23 any entitlement to monetary sanctions, including attorney's fees.

24 4. Unless disclosure is ordered by the Court, attorneys for defendants shall have the sole
25 authority to determine that documents subject to the PROTECTIVE ORDER are no longer
26 considered CONFIDENTIAL INFORMATION and will advise counsel for plaintiff in writing if this
27 determination is made.
28

1 5. Plaintiff's Counsel may exhibit, discuss, and/or disclose CONFIDENTIAL
2 INFORMATION only to the following categories of person and no other unless authorized by order
3 of the Court:

4 a. Plaintiff's Counsel;

5 b. Experts, investigators or consultants retained by Plaintiff's Counsel to assist in the
6 evaluation, preparation, or trial of this case; however, before any expert, investigator, or consultant is
7 permitted to review the CONFIDENTIAL INFORMATION, such individual must agree to comply
8 with the terms of this PROTECTIVE ORDER by executing the document attached as Exhibit A.
9 Plaintiff's counsel shall file and serve that document upon its execution; however, Plaintiff's counsel
10 shall not be required to file any Agreement to Comply any earlier than the date that Expert
11 Disclosures are required to be made. Experts, investigators, and consultants shall not have any power
12 to authorize further disclosure of CONFIDENTIAL INFORMATION to any other person.

13 6. CONFIDENTIAL INFORMATION produced pursuant to this PROTECTIVE ORDER
14 may be reviewed and relied upon in this case only, and not for any other purpose. Plaintiff's Counsel
15 may not use any CONFIDENTIAL INFORMATION produced pursuant to this PROTECTIVE
16 ORDER in any other litigation.

17 7. Counsel for Plaintiff may not provide originals or copies of the CONFIDENTIAL
18 INFORMATION to any plaintiff absent the written agreement of counsel for the City or a court
19 order, subject to the following:

20 a. For purposes of evaluating the settlement value or potential jury verdict, counsel for
21 Plaintiff may discuss the general nature of the CONFIDENTIAL INFORMATION with plaintiffs
22 without disclosing any identifying details about a specific incident or any documents.

23 b. Plaintiffs' counsel may also review with a plaintiff any statement or interview given by that
24 plaintiff.

25 8. Unless otherwise stipulated to by defendants, any use of CONFIDENTIAL
26 INFORMATION or comment on the substance of any CONFIDENTIAL INFORMATION in any
27 papers or pleadings filed with the Court, shall be filed under seal pursuant to the Court's rules and
28 procedures (see Northern District of California Civil Local Rule 79-5). The sealed envelopes shall be

1 endorsed with the caption of this litigation, and an indication of the nature of the contents of the
2 envelopes and a statement substantially in the following form:

3
4 "This envelope contains documents that are filed in this case pursuant to a
5 Protective Order and are not to be opened nor the contents thereof to be
6 displayed or revealed except by further order of the Court or written consent of
7 the City and County of San Francisco."

8 9. In the event any person desires to exhibit documents or disclose CONFIDENTIAL
9 INFORMATION covered under this stipulation during trial or pretrial proceedings, such person shall
10 meet and confer with counsel for defendants to reach an agreement, in accordance with the Court's
11 rules and procedures, on an appropriate method for disclosure, and if defendants do not agree to such
12 disclosure, such CONFIDENTIAL INFORMATION shall not be disclosed unless authorized by
13 order of the Court. Unless otherwise agreed, transcripts and exhibits that incorporate or reference
14 CONFIDENTIAL INFORMATION covered under this stipulation shall be treated as
15 CONFIDENTIAL INFORMATION that is subject to the provisions of this PROTECTIVE ORDER.
16 The Court Reporter shall mark as "Confidential" any deposition or hearing transcript that contains
17 any CONFIDENTIAL INFORMATION or any reference to CONFIDENTIAL INFORMATION.

18 10. Any inadvertent disclosure made in violation of this PROTECTIVE ORDER shall be
19 immediately corrected by the offending party and does not constitute a waiver of the terms of this
20 PROTECTIVE ORDER, except by written agreement of the parties, or further order of this Court.

21 11. All documents covered by this PROTECTIVE ORDER and copies thereof (including
22 those in the possession of experts, consultants, *etc.*) will be returned to the San Francisco City
23 Attorney's Office at the termination of this litigation. On final disposition of this case, plaintiff's
24 counsel shall within 30 days after the final disposition of this case, without request or further order of
25 this Court, return all CONFIDENTIAL INFORMATION to the Deputy City Attorney of record in
26 this matter. The provisions of this PROTECTIVE ORDER shall, without further order of the Court,
27 continue to be binding after the conclusion of the action, and this Court will have jurisdiction to
28 enforce the terms of this PROTECTIVE ORDER.

12. Should plaintiff(s) fail to comply with this PROTECTIVE ORDER, plaintiff(s) and plaintiffs' counsel shall be liable for all costs associated with enforcing this agreement, including but not limited to all attorney fees in amounts to be determined by the Court. Plaintiff and plaintiff's counsel may also be subject to additional sanctions or remedial measures, such as contempt, evidentiary or terminating sanctions.

IT IS SO STIPULATED.

Dated: September 11, 2008

DENNIS J. HERRERA


City Attorney

JOANNE HOEPER

Chief Trial Deputy

SEAN F. CONNOLLY

Deputy City Attorneys


-/s/- Sean F. Connolly

By:

SEAN F. CONNOLLY

Attorneys for Defendants CITY AND COUNTY OF

SAN FRANCISCO,

HEATHER FONG, IN HER OFFICIAL CAPACITY,

JESSE SERNA, AND NELSON ARTIGA

Dated: September 10, 2008

-/s/- Benjamin Nisenbaum

By:

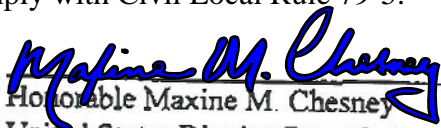

BENJAMIN NISENBAUM

Attorney for Plaintiff

ORDER

BASED ON THE ABOVE STIPULATION, IT IS SO ORDERED. Any party who seeks to file any document under seal must comply with Civil Local Rule 79-5.

Dated: September 15, 2008


Honorable Maxine M. Chesney
United States District Court Judge

STIPULATED PROTECTIVE ORDER-